

FIRST READING AND NOTICE OF HEARING CITY OF PORTAGE, MICHIGAN NOTICE

TO THE RESIDENTS AND PROPERTY OWNERS OF THE CITY OF PORTAGE AND ALL OTHER INTERESTED PERSONS.

NOTICE IS HEREBY GIVEN, that an Ordinance to add Article 9, Temporary Moratorium on the Use of Property and Structures for Dispensing and Cultivating Marihuana, of Chapter 2, Administration, of the Codified Ordinances of Portage, Michigan, was introduced for first reading at a regular meeting of the City Council held on April 26, 2016, and that the Council will hold a public hearing on the proposed amendments at the Portage City Hall in said City on May 10, 2016, at 7:30 p.m. or as soon thereafter as may be heard.

NOTICE IS FURTHER GIVEN that the proposed ordinance amendment reads as follows:

THE CITY OF PORTAGE ORDAINS:

That Chapter 2 shall be amended to add the following:

ARTICLE 9. Temporary Moratorium on the Use of Property and Structures for Dispensing and Cultivating Marihuana.

Sec. 2-320. - Findings.

- (a) November 4, 2008, Michigan voters approved a statewide legislative initiative to create the Michigan Medical Marihuana Act (MMMA) which has been codified at MCL 333.26421 et seq., and allows the possession, use and cultivation of marihuana for the treatment of certain illnesses or conditions under certain circumstances and pursuant to certain regulations and restrictions ("medical marihuana").
- (b) The MMMA also does not contain any provision as to where and under what conditions a medical marihuana related land use can be located or if such a use can be prohibited or regulated in any particular way.
- (c) Portage Code Section 42-129(c) permits, as a Medical Marihuana Home Occupation, no more than one primary caregiver to possess up to the maximum amount of marihuana and marihuana plants to assist no more than the maximum number of qualified patients permitted under the MMMA who is connected with the primary caregiver through the State's registration process.
- (d) Neither the Portage Zoning Ordinance nor the Business License Ordinance specifically provide for properties or structures to be used as facilities for "dispensing" marihuana or cultivating marihuana plants for medical or any other purposes other than in accordance with Section 42-129(c), Medical Marihuana Home Occupation.
- (e) The City of Portage land use element of the Comprehensive Plan adopted on June 19, 2014 and the city's general prohibition on uses not expressly permitted by the city's zoning ordinance must be considered in addressing whether to allow facilities for dispensing marihuana and/or cultivating marihuana plants other than in accordance with Section 42-129(c), Medical Marihuana Home Occupation, and if allowed, where to locate such uses in the city.
- (f) The MMMA permits registered qualifying patients and registered primary caregivers to possess specific amounts of marihuana under certain circumstances and to cultivate a specific number of plants, but the MMMA does not specifically address the zoning of these activities.
- (g) The MMMA does not address that federal law at 21 USC, Section 841 makes it a crime to manufacture, cultivate or distribute marihuana. However, the Michigan Supreme Court has ruled that the Michigan Medical Marihuana Act is not preempted by such federal law.
- (h) The city council desires to ascertain the best path to comply with the MMMA and protect the public health, safety, and welfare.
- (i) It may be necessary to amend the City Code to address these issues and further research, investigation and study by city administration is needed before specific recommendations can be made.
- (j) Considering and acting upon rezoning, special land use, site plan, change of use, certificate of occupancy or other proposals relating to medical marihuana land uses during the process of considering whether and how to amend the City's Code of Ordinances to address such new uses in the community would be counter-productive and undermine the city's efforts to accomplish community wide planning and zoning objectives and to provide for the health, safety and welfare of the city and its residents.
- (k) The city council also deems it prudent and desirable to temporarily defer any consideration or action taken by any city official and/or agent regarding rezoning, special land use, site plan, change of use, certificate of occupancy and other proposals, submissions and applications pertaining to medical marihuana land uses.

Sec. 2-321. - Prohibition of use of property and structures for medical marihuana.

- (a) Based on the findings set forth above and for the protection of the public health, safety and welfare, the city council hereby prohibits for a period of 180 days from the effective date of this ordinance, the establishment or expansion of the use of all property, buildings and structures in the city as facilities for the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer or transportation of marihuana or paraphernalia relating to the administration of marihuana or the cultivation of marihuana plants for medical and any other purpose and the issuance of any city permits, licenses and approvals, including but not limited to, building permits, land use permits and certificates of occupancy for such uses.
- (b) That this moratorium and prohibitions imposed hereunder shall not be applicable to the following:
 - (1) A dwelling unit (as defined by the zoning ordinance) where a qualifying patient resides and is cultivating up to the maximum number marihuana plants as permitted by the MMMA for personal use or possesses up to the maximum amount of marihuana permitted by the MMMA for personal use.
 - (2) A building or structure (as defined by the zoning ordinance) other than a dwelling unit where no more than one qualifying patient is cultivating up to the maximum number of marihuana plants as permitted by the MMMA for personal use or possesses up to the maximum amount of marihuana permitted by the MMMA for personal use.
 - (3) A dwelling unit where no more than one primary caregiver is cultivating up to the maximum number marihuana plants as permitted by the MMMA for assisting qualified patient(s) or possesses up to the maximum amount of marihuana permitted by the MMMA for assisting a qualifying patient(s) who are connected to the primary caregiver through the State's registration process, as regulated by the MMMA and complies with Section 42-129(c) of the Portage Code of Ordinances before the effective date of this moratorium ordinance.
- (c) That city council directs the city administration to continue its research, investigation and study and make specific recommendations regarding the potential regulation of marihuana for medical use which may include, but not be limited to, the dispensing of medical marihuana and cultivation of marihuana plants.
- (d) Nothing herein shall restrict a licensed physician from prescribing medical marihuana to be used for medical purposes compliant with state law.
- (e) That during the period of this moratorium, any entity, or individual alleging that the deferred review resulting from the moratorium will result in the denial of any viable economic use of property or would otherwise result in a violation of applicable federal or state law shall be entitled to an expedited hearing before the city council. At the conclusion of this hearing, the city council shall make findings and conclusions with respect to whether or not the petitioner has demonstrated that all viable economic use of the property has been denied by the deferred review, and/or whether or not the moratorium as applied to the petitioner violates applicable law. If it is demonstrated by credible evidence and found that the deferral has the effect of denying all viable economic use of the property or that the deferral violates applicable law, the city council shall grant relief from the moratorium for the petitioner to the extent necessary to cure the violation.
- (f) If any section, clause or provision of this moratorium ordinance shall be declared to be unconstitutional, void, illegal or ineffective by any court of competent jurisdiction, such section, clause or provision declared to be unconstitutional, void, illegal or ineffective shall thereby cease to be a part of this moratorium ordinance but the remainder of this ordinance shall stand and be in full force and effect.
- (g) For the purpose of this moratorium ordinance, all words and phrases contained herein shall have the meaning ascribed to them by the MMMA codified at MCLA 333.26421 et seq.

Sec. 2-322. - Expiration.

The moratorium imposed by this ordinance shall expire the earlier of 180 days from its effective date or upon adoption by city council of an ordinance amendment(s) regarding the issues concerning the regulation of medical marihuana and marihuana plants.

Sec. 2-323. - Penalty.

- (a) Any person, firm, association, partnership, corporation or entity that violates any of the provisions of this article shall be deemed responsible for a municipal civil infraction which shall be punishable by a civil fine as provided for section 1-7(e) of this Code. The director of public safety and the director of the department of community development and other persons who are employed by the city in these departments and duly authorized by the director/chief are authorized to issue municipal civil infraction citations for violation of this article.
- (b) Additionally, the violator shall pay costs which may include all expenses direct and indirect to which the city has been put in connection with the municipal infraction.
- (c) Notwithstanding any other remedy, the city shall have the right to proceed in any court of competent jurisdiction for the purpose of obtaining an injunction, restraining order or other appropriate remedy to compel compliance with this article.
- (d) Each day that a violation of this article continues to exist shall constitute a separate violation of this article.

Dated: April 30, 2016

James R. Hudson, City Clerk